IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

WP(C).No. 462 of 2005(E)

AGAINST THE ORDER IN EP 82 2003 IN
OS.68/1999 of PRINCIPAL SUB COURT,KOLLAM

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PETITIONER:

MOHAMMED HANIFA, REJU HOUSE,
M.G.STREET, THAMARAKULAM, KOLLAM.

BY ADV. SRI.K.S.MANU (PUNUKKONNOOR)
SRI.P.SREEKUMAR

RESPONDENT:

PRAVEEN S.DEV, DEV'S ENTERPRISES
KEERICADU, RAMAPURAM, ALLEPPEY.

BY ADV. SRI.N.B.MAHADEVAN PILLAI
SRI.P.R.JAYAKRISHNAN
SRI.BIJU MANOHAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 462/O5)

PETITIONER'S EXT.:

EXT.P1: TRUE COPY OF THE ORDER DT. 1.12.2004 IN EP NO.82/03.

PIUS C. KURIAKOSE,J.

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W.P.(C) No. 462 of 2005

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Dated: 1st June, 2007

JUDGMENT

The petitioner was arrested in personal execution of a money decree and produced before the execution court. He filed I.A.No.583 of 2004 seeking release. The court below noticing that the E.P.claim was around Rs.1,25,000/- allowed his application imposing a condition that he shall pay a substantial amount of Rs.30,000/- by 17.12.2004. This court on admitting the Writ Petition granted interim stay of operation of Ext.P1. This court however permitted the proceedings in the court below to continue.

2. The grounds raised in the Writ Petition are: (1) the decree which was being executed is an ex parte decree and the petitioner had filed application for setting aside the same on the trial side (2) there was sufficient reason for the petitioner not appearing before the execution court in response to the arrest notice (3) the petitioner is a very old man suffering from various ailments and hence not liable to be arrested or detained. Learned counsel for the petitioner is unable to inform me as to the present status of the applications filed by the petitioner for setting aside the ex parte decree.

3. If any application filed by the petitioner is pending before the trial court, that court will take up that application and dispose of the same in accordance with law (if not already disposed of) at the earliest and at any rate within six weeks of receiving copy of this judgment.

4. As for the contention that the petitioner is a very old person and suffering from various ailments, the same is to be considered by the court below before passing the order of detention. I am sure that the court below will consider that aspect of the matter at the appropriate time. The court below became constrained to order arrest against the petitioner only because he did not appear in response to the notice under Rule 37. May be the petitioner has some reason for not appearing on the hearing date. But at the same time the court below cannot be blamed for having ordered arrest against the petitioner, a person who did not appear in response to court notice. Under these circumstances, I do not find any warrant for correcting the impugned order by which a sum of Rs.30,000/- which is roughly one-fourth of the plaint claim is imposed as a condition for release. However, considering the submissions of the learned counsel for the

petitioner even as I confirm Ext.P1, the condition regarding payment will be modified to the extent of reducing the same from Rs.30,000/- to Rs.10,000/-.

The Writ Petition is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**

After I delivered the judgment, learned counsel for the petitioner submits that the issue has been settled between the parties. Accordingly, the Writ Petition is dismissed as settled out of court.

1st June, 2007 **PIUS C.KURIAKOSE, JUDGE**.